

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>NUTRA-FLO COMPANY</b>  Sioux City, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ- <b>25</b>
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TO: Raun D. Lohry, President  
Nutra-Flo Company  
216 Cunningham Drive  
Sioux City, Iowa 51106

Jane McAllister  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231

**I. SUMMARY**

This administrative consent order is entered into between Nutra-Flo Company (Nutra-Flo) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving air quality permitting violations. The parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryan Bunton  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-0363

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Nutra-Flo neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Nutra-Flo makes a variety of products, including animal nutrients, animal feed additives, and liquid fertilizers. Air Quality construction permits have been issued to three Nutra-Flo facilities located in or near Sioux City, Iowa: Floyd (514 Floyd Blvd, Sioux City, Iowa), Ultra Phos (2100 Grand, Sioux City, Iowa), and Nulex (Port Neal, Iowa). The Nutra-Flo Floyd facility is the subject of this administrative consent order.

2. In November 1999, an initial construction permit was issued to Nutra-Flo Floyd for a double drum dryer (EP 5). The construction permit included an emission limit of 3.29 lbs/hr for particulate matter equal to or less than 10 microns in aerodynamic diameter (PM<sub>10</sub>). The PM<sub>10</sub> limit was established to be protective of the 24-hour PM<sub>10</sub> national ambient air quality standards (NAAQS). The construction permit for EP 5 did not require modeling due to the low expected emissions and distance from the property line. At the time of the permit issuance the facility operated two double drum dryers (EP 4 and EP 5) and both were controlled by individual wet scrubbers that condensed the steam in the exhaust. The facility operated in this manner until sometime in 2007 when three additional drum dryers were added to EP5. In its current figuration at the facility, EP 5 exhausts four steam heated double drum dryers that dry a pork by-product for use as a dry animal feed nutrient.

3. On September 30, 2010, DNR Field Office 3 responded to several odor complaints at the facility. During the investigation, DNR Field Office 3 required a stack test on EP 5 to verify compliance with the permitted emission limits. On October 26, 2010, Nutra-Flo Floyd conducted a stack test on EP 5.

4. On January 4, 2011, a representative from Nutra-Flo informed DNR Field Office 3 that the three additional drum dryers were added to EP 5 without first obtaining a construction permit modification. The Nutra-Flo representative explained that some dryers were added to EP 4 without obtaining a construction permit modification. EP 4 was then removed and the permit rescinded. The dryers from EP 4 were routed to EP 5 without first obtaining a construction permit modification.

5. On January 6, 2011, Nutra-Flo Floyd submitted the stack test results to the DNR. The results of the first stack test indicated the PM<sub>10</sub> emission rate was at 13.45 lbs/hr (3.29 lbs/hr permit limit). This equated to 409% of the permitted emission limit. Stack test results are to be submitted within 45 days after completion

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of the test period. Nutra-Flo Floyd submitted the stack results 26 days after the reporting deadline.

6. On January 7, 2011, DNR issued a Notice of Violation letter to Nutra-Flo Floyd for the emission limit violation. The letter requested that Nutra-Flo Floyd submit a compliance plan for the emission limit violation by February 4, 2011.

7. On January 25, 2011, Nutra-Flo Floyd submitted a compliance plan to the DNR indicating that the facility intended to work with the DNR construction permit section to modify the construction permit for EP 5 to accurately reflect the equipment associated with EP 5. On March 18, 2011, Nutra-Flo Floyd submitted construction permit applications to modify EP 5.

8. In May 2011, the facility initiated emergency management operations in response to Missouri River flooding. The flood event delayed the facility's proposed schedule submitted with the March 2011 application for addressing the violations. In October 2011, Nutra-Flo Floyd submitted a revised compliance plan to address the violations.

#### **IV. CONCLUSIONS OF LAW**

Nutra-Flo neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 22.3(3) states a permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. Condition 10 of the construction permit for EP 5 included a PM<sub>10</sub> emission limit of 3.29 lbs/hr. A stack test conducted in October 2010 indicated PM<sub>10</sub> emissions in excess of the permitted limits. The above facts demonstrate a violation of this provision.

3. 567 IAC 22.3(3)(e) further requires that if changes in the final plan and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained. This requirement is specifically included in Nutra-Flo's construction permit for EP 5. Condition 3 of the construction permit states:

It shall be the responsibility of the owner to ensure that construction conforms to the final plans and specifications as

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submitted and that adequate operation and maintenance is provided to ensure that no condition of air pollution is created.

A supplement to this permit shall be obtained if the owner proposed changes to the final submitted plans and specifications

Nutra-Flo added an additional three dryers to EP 5 and made other alterations to EP 5 prior to obtaining a supplemental construction permit. The above facts demonstrate noncompliance with this provision.

4. 567 IAC section 25.1(7)(a) and Condition 8 of the construction permit for EP 5 requires the results of the [stack] tests to be submitted in writing to the DNR in the form of a comprehensive report within six weeks of the completion of the testing. The stack test results for the stack tests conducted on October 26, 2010 for EP 5 were not submitted within the required six weeks. The stack test results were submitted 26 days past the deadline. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders and Nutra-Flo agrees to the following:

1. Nutra-Flo shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic

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benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data is not available. Nutra-Flo has received an economic benefit by adding dryers to EP 5 without first obtaining a supplemental permit. Nutra-Flo has been able to delay the cost of preparing the application and conducting modeling. Nutra-Flo has also gained an economic benefit of failing to demonstrate compliance with the permitted emission limit. The facility also has been able to delay the costs of complying with air pollution control limits for the modified EP 5 air source. For these reasons, \$2,000.00 is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Nutra Flo’s failure to submit a permit application prior to the addition of the other dryers prevented the DNR from evaluating the potential emissions and ambient air impacts from the modified source. This review insures that the interests of the citizens of Iowa in clean air are protected. The  $PM_{10}$  emission limit was established to be protective of the NAAQS. The stack test results indicated that the  $PM_{10}$  emissions were 409% over the emission limit. The stack test results indicated a potential threat to public health and to the environment. The violations threaten the integrity of the air quality construction permit and air pollution control programs. For these reasons, \$3,000.00 is being assessed for the emission limit violation cited in Section IV, Paragraph 2 and \$3,000.00 is being assessed for the violations cited in Section IV, Paragraphs 3 and 4 for a total of \$6,000.00 being assessed for this factor.

Culpability – Nutra-Flo has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. For these reasons, \$2,000.00 is assessed for this factor.


## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Nutra-Flo. For that reason, Nutra-Flo waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative consent order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 17<sup>th</sup> day of  
September, 2012

  
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NUTRA-FLO COMPANY

Dated this 17<sup>th</sup> day of  
September, 2012

Air Quality Bureau (#97-01-190); Kelli Book; Bryan Bunton; DNR Field Office 3;  
EPA; VII.A.2 and VII.B.2.c